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## LEGAL UPDATE

Legal Services Division



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### ADMINISTRATIVE RULES REVIEW COMMITTEE — JULY 9, 2019

**Purpose.** *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

#### **UTILITIES BOARD, *Intrastate Gas Pipelines and Underground Gas Storage*, 6/19/19 IAB, ARC 4506C, NOTICE.**

**Background.** The proposed rulemaking updates the requirements for obtaining natural gas permits and is based upon the board's experience in recent years in reviewing petitions for permits. In addition, the board is updating the safety standards for natural gas pipelines to make them consistent with federal and industry standards since pipeline companies are required to comply with the most recent federal and industry standards.

**Commentary.** Mr. Matt Oetker and Mr. Cecil Wright represented the board and responded to questions. Committee members noted that the definition of county inspector lacked clarity and asked that the board revisit the definition. Mr. Wright stated that he reached out to the county inspectors who worked on the Dakota Access Pipeline to review this definition and these were the suggested changes. The goal was to have county inspectors who were qualified to do the inspections and who understood what their statutory requirements were.

Mr. Brandon Geib spoke on behalf of Black Hills Energy regarding 199 IAC 10.2(5), identifying three different definitional requirements for notices for pipeline projects: landlords and tenants, all persons with legal rights or interests in property, and all persons with property interests in each corridor within which the pipeline company proposes to construct a pipeline. Mr. Geib recommended a singular definition that limited the class to provide notice to landlords and tenants. He stated the rulemaking would require the company to provide notice prematurely which results in the company providing notice to more people than who ultimately need to receive notice of the construction of a pipeline because pipeline routes change during planning; he stated this would be costly and inefficient.

Mr. Wright responded by stating that the change is being made in order to ensure that all of the affected persons with a legal interest are notified that a pipeline may traverse their property; a change the board is making because the board has learned it is necessary through experience. Mr. Wright stated that he understood the rulemaking was broader than statutory requirements, which refer to persons on taxpayer rolls and persons in possession. He stated he hoped that Black Hills would file its comments, so that the board could better understand Black Hills' position and so that it could reach a balance between providing notice to affected persons with legal interests and limiting the amount that companies have to pay. Mr. Wright also stated the board was establishing stricter standards for eminent domain because companies have not always shown due diligence in finding individuals who have legal interests in property. He provided an example of a company serving deceased individuals in lieu of providing actual notice.

Committee members expressed concern that Mr. Wright stated that the rulemaking was broader than statutory requirements because the board does not have requisite statutory authority and needs to approach the General Assembly for requisite authority. Furthermore, committee members, referencing Mr. Geib's example, expressed concern about the rulemaking requiring companies to spend money for parcel searches for over 500 parcels, when only 70 are affected.

**Action Taken.** No action taken.

**DEPARTMENT OF PUBLIC HEALTH, *Medical Cannabidiol Program*, 6/5/19 IAB, ARC 4489C, ADOPTED.**

**Background.** The proposed rulemaking includes a variety of amendments to the department's rules on the medical cannabidiol program, including regulation of product recalls, manufacturer operating documents, crop inputs, prohibited actions for health care practitioners, and other matters.

**Commentary.** Mr. Lucas Nelson made a public comment on behalf of MedPharm. He explained that MedPharm had discussed the noticed rulemaking with the department, which resulted in positive changes that are fair to licensees. He stated that there were still some matters he would like to see addressed.

Mr. Lucas expressed concern that the rulemaking removes standards for laboratory testing from rule and instead provides that the standards will be placed in another department document with licensees given an opportunity to comment on changes. He additionally expressed concern regarding the language on product recalls, stating that newly added language providing for consultation with the department's medical director prior to issuing a recall did not provide certainty for manufacturers regarding recall procedures. Mr. Lucas also expressed concern that the rulemaking requires manufacturers to seek department approval of their crop inputs. He explained that the rulemaking is unclear on what happens if an input is neither approved nor denied or if an approved input is used and later the approval is rescinded. Mr. Lucas further stated that the rulemaking's limitations on health care practitioners certifying family members and advertising could impede new patients from participating in the program and thus harm the program's growth. Finally, Mr. Lucas expressed concern regarding the rulemaking's requirement that manufacturers enter various data on their operations into the department's tracking system, noting that the rulemaking does not include a process, safe guards, or timelines for doing so.

Committee members asked what would trigger a product recall. Ms. Susan Dixon, speaking on behalf of the department, explained that the department would use the same factors their medical director would use for any situation, such as a recall of salad or peanut butter. The factors would be health and safety, with consideration of whether people are becoming ill, whether the numbers are statistically significant, and whether hospitalizations have occurred.

Committee members asked why the department needs to authorize a manufacturer's crop inputs, and questioned where that information would go once it is out of the manufacturer's control. Members commented that it would be significant if the Department of Agriculture and Land Stewardship did something similar for all crop inputs of corn growers, and stated that such information should be considered a trade secret. Mr. Owen Parker, also speaking on behalf of the department, explained that there are nefarious manufacturers who do not disclose the use of chemicals in their products that may be harmful to the public and that the increased disclosures should reduce the need for product testing, which should reduce costs for manufacturers and patients.

Committee members asked if MedPharm would be better off with or without the rulemaking in place. Mr. Lucas stated that there are some matters in the rulemaking MedPharm has no issues with and some it does have issues with, but agreed with the department that the rules on this subject needed to be updated.

Committee members confirmed with Ms. Dixon and Mr. Lucas that the department went through a two-year process to select MedPharm as a manufacturer and that products derived from cannabis plants are tested at the state hygienic laboratory. Committee members asked what need there is to regulate crop

inputs in the manner the rulemaking does. Mr. Parker explained that the state hygienic lab doesn't test for everything and that while he respects MedPharm and the other selected manufacturer, not every manufacturer might be as good as they are.

Committee members suggested the department could prepare a list of prohibited crop inputs. Ms. Dixon explained that the regulation of crop inputs in the rulemaking is not punitive, as it only requires that a manufacturer notify the department about crop inputs to be used and permits manufacturers to use the inputs if they do not hear back from the department within 48 hours. Mr. Lucas explained that the definition of crop inputs is quite broad and includes not just pesticides but also the nutrient mix used. He expressed interest in having a list of prohibited substances from the department. Ms. Dixon noted the department can grant waivers from the crop input requirements if a situation becomes untenable.

In response to further questions, Mr. Lucas explained that the rulemaking is not clear on how a manufacturer would carry out a recall, how the department would determine whether a recall is necessary, and how much input a manufacturer would have on the department's processes.

Ms. Dixon stated that she does not envision the department taking over a recall process, which would be similar to how the department would not control a recall of a product from grocery stores. Committee members asked if the department similarly requires that inputs for products such as peanut butter be reported to the department. Mr. Owen stated he could not speak to that, but explained that the language in the rulemaking on recalls is based on similar regulations from Colorado and California.

**Action Taken.** After a discussion of committee procedures relating to delays, a motion for a session delay on items 1, 4, 7, 10, 11, 12, 13, 15, 21, 22, and 24 of the rulemaking passed on a voice vote with two recorded no votes, with nine members present and one member participating by phone. Additional review is scheduled for the October meeting.

#### **EDUCATION DEPARTMENT, *School Bus Construction Standards, 6/5/19 IAB, ARC 4479C NOTICE.***

**Background.** The proposed rulemaking outlines construction standards for school buses in Iowa. The amendments reflect changes to the rules to mirror changes in standards as recommended by the National School Transportation Specifications and Procedures Manual 2015 and the Department of Education's Chapter 44 Update Group, and in requests from the field.

**Commentary.** Ms. Nicole Proesch and Mr. Max Christensen represented the department and responded to inquiries. Committee members inquired whether 2019 Iowa Acts, House File 499, is implemented in this rulemaking. Ms. Proesch indicated that this rulemaking does not implement that Act because this rulemaking was drafted before that Act was passed. Ms. Proesch indicated that the law supersedes the rules, so the department can implement the law even if the rules predate the law. Committee members indicated that July 1, 2019, is a completely unrealistic effective date for the rules. Ms. Proesch indicated that the board can implement House File 499 in this rulemaking through the adoption phase and it will be effective for October.

Committee members indicated that the rulemaking states that school bus cameras can only extend down 1 inch, but there is a company that makes a camera that extends down 1 and 1/2 inches. Committee members inquired whether the rulemaking can extend the length to include this company's product. Mr. Christensen responded that the rule is written for the benefit of tall children, so that they do not hit their heads; but the board can extend the length that the camera extends down.

Committee members stated that they have gotten feedback on the rulemaking from bus drivers urging the committee members to vote against the rulemaking due to the seat belt requirement. Furthermore, committee members noted that legislators want input on the subject. Committee members expressed a preference to discuss seat belts on school buses as a legislative matter, not an administrative rule matter. Ms. Proesch confirmed that the rulemaking does not require that school buses be retrofitted with seat belts. Mr. Christensen stated that the cost for seat belts on a new bus is \$123 per seating position, which ends up being 4 to 4.5 cents per child per day over the life of the school bus, which is about 15 years.

Committee members inquired whether if a school district buys a school bus with seat belts, the students need to receive evacuation training regarding the seat belts. Mr. Christensen responded that schools do need such evacuation training. Committee members noted that the rulemaking specifies three-point harnesses. Committee members inquired how long a child needs to stay in a five-point harness. Mr. Christensen stated it depends on age and weight; it could be 3 or 4 years old. There are school buses with 3- to 4-year-old children riding the bus. School buses do not currently require five-point harnesses.

Ms. Emily Piper spoke on behalf of the Iowa Association of School Boards (IASB). She stated that the IASB is supportive of requiring buses to have seat belts and she agrees that this requirement would be limited to new school buses. However, Ms. Piper stated that the current rulemaking is not clear that the construction standards apply only to new buses. She noted that the fiscal note anticipates retrofitting. Ms. Proesch indicated that the board is currently rewriting the rulemaking to make it clear that the rulemaking does not require retrofitting buses for seat belts.

Committee members noted that the rulemaking as written does not require a fire extinguisher, but may allow it. Ms. Proesch noted that she is awaiting the report on the Riverside, Iowa, bus accident and will consider that report when it comes out.

Mr. Merrill Mueller, the transportation director for the Algona Community School District, spoke in support of the rulemaking and the requirement for seat belts. He stated that on April 21, 2018, a major bus accident occurred on I-35 in Ankeny, and he determined there was a need for lap shoulder belts after reviewing what occurred. He also noted that he was supportive of five-point lap shoulder belts to transport 3- to 5-year-olds because safety is his number one priority. In response, committee members stated that they have received feedback from other bus drivers that it would be difficult for small children to free themselves from a school bus that is submerged in water or on fire if the children were wearing seat belts. Mr. Mueller responded by saying that it may take a second or two longer to get everyone off but adults grew up in seat belts, the kids today grew up in seat belts; kids know how to get out of seat belts. Furthermore, buses are equipped with seat belt cutters and drivers can use cutters if needed. Mr. Mueller indicated that evacuation drills are done with full seat belts.

**Action Taken.** No action taken.

**Next Meeting.** The next committee meeting will be held in Room 116, Statehouse, on Monday, August 12, 2019, beginning at 9:00 a.m.

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